

AGREEMENT FOR REGISTRATION AND PAYMENT OF MICHIGAN FLOW-THROUGH WITHHOLDING

THIS AGREEMENT is made and entered into by and between **Company Name.** (hereinafter the "Company"), and the Michigan Department of Treasury (hereinafter the "Department").

WHEREAS, it is the statutory duty of the Department to enforce and uphold the Michigan Income Tax Act, MCL §206.1 et seq.; and

WHEREAS, the Michigan Income Tax Act 281 of 1967 was amended to include new flow-through withholding requirements, effective January 1, 2012, MCL §206.1 et seq.; and

WHEREAS, the Company is a nonfiler for the tax being disclosed and has a filing responsibility under nexus standards issued by the Department or enacted into law after December 31, 1997; and

WHEREAS, pursuant to MCL §205.30c, the Department may enter into voluntary disclosure agreements with qualified taxpayers under designated terms and conditions; and

WHEREAS, the Company wishes to voluntarily come forward to achieve certainty and predictability with the Department as to its tax status in Michigan;

NOW THEREFORE, the Company and the Department, in consideration of the mutual promises and benefits specified herein, hereby agree as follows:

1. The Company's Registration, Filing and Remittance Responsibilities

- a. Michigan Flow-Through Withholding Tax Registration, Filing and Remittance. The Company shall register with the Department to file Michigan flow-through withholding tax by Date . The Company agrees to file Michigan annual flow-through withholding return and remit applicable tax and interest due for the tax period that began on Date . The tax return shall be submitted by Date . The Company, further, agrees to file any past due quarterly flow-through withholding tax returns and remit applicable tax and interest for the current tax year beginning on Date by Date . The Company shall comply with the Michigan Income Tax provisions of MCL §206.1 et seq.
- b. Michigan Flow-Through Withholding for Lookback Period. The Company shall determine the amount of flow-through withholding tax due for the tax periods beginning **Date** through **Date**, and file appropriate annual withholding returns along with all tax and interest due and owing under such returns. The tax returns shall be submitted by Date . The Company shall comply with the Michigan Income Tax provisions of MCL §206.1 et seq.

2. Audit of Prior Periods

The Company agrees to make its books and records for periods prior to Date available to the Department upon reasonable notice for the purpose of verifying the factual representations made by the Company in this Agreement, determining the Company's tax liability for the applicable lookback period, or to determine another person's tax liability.

3. Departmental Waiver of Tax, Interest, and Penalties

So long as the Company fully and timely performs all duties under this Agreement and provided that facts established are not materially different from the facts disclosed by the Company in Section 5 of this Agreement, the Department hereby agrees:

- a. Not to assess the Company for any potential Michigan flow-through withholding liabilities, including penalties and interest, for any period prior to Date .
- b. Not to assess the Company for any penalties, discretionary or nondiscretionary relating to the lookback period identified in Section 1.b of this Agreement, and, if applicable, for tax payments submitted in accordance with Sections 1.a.
- c. Not to bring any criminal action against the Company for failure to report or remit any Michigan flow-through withholding tax which may be allegedly due and owing by the Company for any periods prior to Date .

4. The Company Waiver of Refunds for Prior Years

The Company agrees not to file a protest or seek a refund of tax paid to this state for the lookback period based on issues disclosed in the Agreement or based on the Company's alleged lack of nexus or contacts with this State. This waiver shall not be construed as a waiver of rights to seek a refund on any other basis including, without limitation, refunds based on computational or clerical errors.

5. The Company Representations

The Company makes the following representations:

- a. The Company has fully disclosed all relevant and material facts in order to induce the Department to enter into this Agreement.
- b. The Company's representations contained in this Agreement are true and correct.
- c. Each of the Company's representations, recitals and terms contained in this Agreement were made for the purpose of inducing the Department to execute this Agreement.
- d. The Company affirms that it has had no previous contact by the Department or its agents including the Multistate Tax Commission regarding the tax covered by this Agreement. For purposes of this section, previous contact as defined in MCL §205.30c. (15)(d) means any notification of an impending audit, review, notice of intent to assess, assessment or subpoena. After June 30, 1999 previous contact will also include a final letter of inquiry.
- e. The Company affirms that it is not currently under audit by the Department or under investigation by the department of state police, department of the attorney general, or any local

law enforcement agency regarding the tax covered by this Agreement.

- f. The Company affirms that it is not currently the subject of any civil action or criminal prosecution involving the tax covered by this Agreement.
- g. The Company affirms that it is not incorporated, organized or domiciled in Michigan.
- h. The Company sells "Business Description".

6. Department Representations

- a. The Department shall keep this Agreement confidential and shall not disclose any of the terms and conditions set forth herein to any tax authorities of any state or governmental authority or with any person except as allowed by exchange of information agreements. The Department shall not exchange information with other states regarding the Company unless specifically requested by other states.
- b. The execution of this Agreement by the Department does not constitute a determination or assessment of potential Michigan flow-through withholding liability. The Department enters into this Agreement under the authority of MCL §205.30c.
- c. Each of the Company's representations, recitals and terms contained in this Agreement are material and have been relied upon by the Department in determining whether to execute this Agreement.

7. Remedy for Misrepresentation

Any material misrepresentation of the facts set forth herein relating to the Company's current activity in Michigan will render this Agreement null and void and of no effect. A change of activities or operations of the Company subsequent to the effective date of this Agreement shall not be deemed a material misstatement of facts or have any effect upon the validity of this Agreement.

8. Miscellaneous

- a. Legal Authority. Each of the Company and the Department represent and warrant that it has the legal authority to enter into this Agreement; that the person executing the Agreement on its behalf is authorized to do so; and that the Agreement shall be binding and enforceable in accordance with its terms when duly executed and delivered by all parties.
- b. Multiple Copies of the Agreement. The parties shall execute one copy of this Agreement for each party. The Department shall maintain the original. A true and accurate copy of an original, certified by the Department, shall be treated for all purposes as an original of this Agreement.
- c. Limitations. Notwithstanding any provision contained herein to the contrary, this Agreement is

limited solely to the Michigan flow-through income tax withholding for the periods specified herein. This Agreement is a negotiated agreement for the Michigan flow-through income tax withholding and does not affect the Company's past, present, or future rights, duties, obligations, or liabilities relating to any other taxes.

- d. Modification and Amendment. This Agreement may only be modified or amended by mutual agreement of the Company and the Department. Any such modification must be in writing and executed by each party.
- e. Notices. Any notices required under this Agreement shall be in writing.
- f. Jurisdiction, Venue, and Interpretation. The interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of Michigan, and any dispute arising with respect thereto shall be determined by the Michigan Court of Claims located in Lansing, Michigan, subject to the right of either party to seek applicable review.
- g. Agreement Signing. This Agreement must be signed by the person subject to this Agreement or his, her, or its lawful representative, and returned to the Department by **Date**, otherwise this Agreement will expire.

Witness and signature page to follow.

IN WITNESS THEREOF, the parties represent and warrant that they have full power and authority to enter into this Agreement and hereunto subscribe their names for the purpose of validly and lawfully executing this Agreement as of the date signed by the Department.

FOR THE DEPARTMENT

State of Michigan
Department of Treasury

Name, Administrator
Tax Compliance Bureau
Discovery and Tax Enforcement Division

Date

FOR THE COMPANY

Company Name

FE#

Officer Signature

Date

Printed Name & Title

Mail both copies of agreement to:

For U.S. Mail (including Certified/Registered)

Michigan Department of Treasury
Discovery and Tax Enforcement Division
P.O. Box 30140
Lansing, MI 48909-7640

For Courier Delivery Service, use:

Michigan Department of Treasury
Discovery and Tax Enforcement Division
7285 Parsons Drive
Dimondale, MI 48821